

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAMAR BROWN, on behalf of himself
and all others similarly situated,
Plaintiff,

-v-

CULTURAL ELEMENTS, INC.,
Defendant.

23-CV-1476 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

Plaintiff Brown filed this action on February 22, 2023 (ECF No. 1), and served Defendant Cultural Elements, Inc. on March 14, 2023 (ECF No. 4). Although Defendant has not yet appeared in the case, Plaintiff has failed to take any affirmative action, such as filing for default judgment, to prosecute this matter. On August 29, 2023, this Court ordered Plaintiff to show cause within seven days as to why this case should not be dismissed for failure to prosecute. (ECF No. 6.) To date, Plaintiff has not taken any action responsive to the Court's order to show cause.

Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action "if the plaintiff fails to prosecute or to comply with the rules or a court order." *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). It is settled that Rule 41(b) "gives the district court authority to dismiss a plaintiff's case *sua sponte* for failure to prosecute." *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). Dismissal without prejudice is appropriate here. Plaintiff was "given notice that further delay would result in dismissal," *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004), and there is prejudice where Plaintiff has caused an "unreasonable delay." *LeSane*, 239 F.3d at 210. Dismissal without prejudice appropriately

strikes a balance “between alleviating court calendar congestion and protecting a party’s right to due process and a fair chance to be heard.” *Id.* at 209.

Accordingly, this action is dismissed without prejudice.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: September 7, 2023
New York, New York



J. PAUL OETKEN
United States District Judge